In the Matter of the Compensation of
SHAWN WILEY, Claimant
WCB Case No. 22-01038
ORDER ON REVIEW
Jodie Phillips Polich, Claimant Attorneys
SAIF Legal, Defense Attorneys

Reviewing Panel: Members Ousey and Curey.

Claimant requests review of Administrative Law Judge (ALJ) Smith's order that upheld the SAIF Corporation's denial of his injury claim for head, chest, kidney, left hand, right elbow, and left lower extremity conditions. On review, the issue is course and scope of employment.

We adopt and affirm the ALJ's order with the following supplementation.

On September 28, 2021, claimant, an operations manager for the employer, was hit by a motor vehicle while walking across a public road from his parked car to his jobsite. (Tr. 5, 22-23).

The employer had several onsite parking spaces. (Tr. 38). Additionally, pursuant to an oral agreement, the employer was allowed to use a parking space, without charge, at a neighboring business located on the opposite side of the public road from the employer's jobsite. (Tr. 15, 39-40).

On the day of the incident, claimant parked his car in the neighboring business's parking space. (Tr. 22). He was struck by a motor vehicle while walking across the public road. (Ex. 1-1; Tr. 23).

SAIF denied claimant's injury claim on the basis that the injuries did not "arise out of" or occur "in the course of" employment. (Ex. 17). Claimant requested a hearing.

Finding that the injury did not occur in the course and scope of claimant's employment, the ALJ upheld SAIF's denial.

On review, claimant contends that his injury is compensable under either the "greater hazard" or "parking lot" exceptions to the "going and coming" rule. Based on the following reasoning, we disagree with claimant's contention.[1]

[1] We adopt the ALJ's reasoning and conclusion that the injury is not compensable under the "greater hazard" exception to the "going and coming" rule.

Claimant must establish that his injury "arose out of" and occurred "in the course of" his employment. ORS 656.005(7)(a); ORS 656.266(1). Whether an injury "arises out of" and occurs "in the course of" employment concerns two prongs of a unitary work-connection inquiry that asks whether the relationship between the injury and employment is sufficient such that the injury should be compensable. *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 596 (1997). Whether the injury "arose out of" employment depends on the causal relationship between the injury and the employment. *Id.*; *Krushwitz v. McDonald's Rests.*, 323 Or 520, 531 (1996). Whether the injury occurred "in the course of" employment depends on the time, place, and circumstances under which the accident took place. *Id.* A sufficient work connection may exist where the factors supporting one prong are weak, if those supporting the other are strong. *Redman Indus., Inc. v. Lang*, 326 Or 32, 35 (1997). Nevertheless, both prongs must be satisfied to some degree; neither is dispositive. *Krushwitz*, 323 Or at 531.

Injuries sustained while the employee is going to, or coming from, the place of employment generally do not occur "in the course of" employment. *Norpac Foods, Inc. v. Gilmore*, 318 Or 363, 366 (1994). The "parking lot" rule, however, provides an exception to the "going and coming" rule. When an employee traveling to or from work sustains an injury "on or near" the employer's premises, the "in the course of" portion of the work-connection test may be satisfied if the employer exercises some "control" over the place where the injury is sustained. *Id.* at 366-67; *Brian J. Schnell*, 73 Van Natta 516, 517 (2021). Such control may arise from the employer's property rights to the area, or as a result of an employer-created hazard. *See Cope v. West Am. Ins. Co.*, 309 Or 232, 239-40 (1990); *Schnell*, 73 Van Natta at 517.

Here, claimant's injury occurred on a public road, not in an employer-controlled parking lot or common area. (Ex. 1-1, Tr. 23). Therefore, the "going and coming" rule applies, without exception, and claimant has not satisfied the "in the course of" prong.[2] *See Cope*, 309 Or at 239-40 (the injury did not occur "in the course of" employment where, after parking her car in a lot leased by the employer, the worker was struck by a vehicle while walking to her jobsite on a public sidewalk); *Adamson v. The Dalles Cherry Growers*, 54 Or App 52, 58-59 (1981) (injury on a public street did not occur in the course of employment because although the claimant had to cross the public street to get to work, the employer

[2] Because the "in the course of" prong is not satisfied, it is unnecessary to determine whether the injury "arose out of" claimant's employment. *See Krushwitz*, 323 Or at 531.

did not exercise control over the public street); *John D. Thompson*, 58 Van Natta 476, 478-81 (2006) (injury on a public street did not occur in the course of employment because although the lack of onsite parking required the claimant to cross the public street, the employer did not exercise control over the public street).

In summary, based on the aforementioned reasoning, as well as that contained in the ALJ's order, we conclude that claimant's injury did not arise out of or occur in the course of employment. Accordingly, the ALJ's order is affirmed and SAIF's denial is upheld.

ORDER

The ALJ's order dated January 17, 2023, is affirmed.

Entered at Salem, Oregon on September 26, 2023